

SUPPLEMENTAL REPORT OF THE MODERATOR'S COMMITTEE ON SHORT-TERM RENTALS: COMPARISON OF ARTICLES 15 AND 17

Article 17

The Moderator's Committee voted 5-1 on February 24th to place Articles 14, 15, and 16 on the Warrant for the Annual Town Meeting. Subsequent to and independent of the Moderator's Committee vote, Susan Roberts (TMM-2) and Maureen Coffey, a member of the committee, placed Article 17 on the Warrant. The Moderator's Committee has not reconsidered its position on Article 15 as a result of the filing of Article 17.

Article 17 is, in effect, an amended version of Article 15. Both Articles would add a new Section 5.11 to Brookline's General By-laws so that the Town would have regulations for short-term rentals. Article 17 differs from Article 15 on questions such as the maximum number of guests that can be accommodated in a short-term rental, the number of days that a short-term rental can be offered per year, whether consent from condominium associations should be required, the procedures for inspections of short-term rental units, and whether abutters should receive notice of short-term rentals. These differences are summarized below.

In general, Article 17 would allow short-term rental units to operate year-round, with more guests, and with less restrictive regulations. Article 17 also enables Town Meeting to consider amendments that would not have been within the scope of Article 15. For example, amendments to increase the number of days that a short-term rental could be offered from 90 days to a higher number would be outside the scope of Article 15. Amendments to Article 17 that would reduce the limit from 365 days to a lower number would be within the scope of that Article. The current Moderator and all candidates for Moderator are aware of these questions of the scope of Articles 15 and 17 and some of the potential amendments that might be offered at Town Meeting.

The Moderator's Committee has not taken a position on whether to make any recommendation regarding Article 17. Other boards, committees, and commissions that make recommendations to Town Meeting will have the opportunity to consider Articles 15 and 17 and to offer motions that are drawn from either or both of these Articles. Town Meeting ultimately will have to decide on what regulations should be adopted for short-term rentals. Together, Articles 15 and 17 help to frame that choice.

This supplemental report summarizes the similarities and differences between Article 15 and Article 17.

What Articles 15 and 17 Have in Common

Many of the provisions of Articles 15 and 17 are identical. Both Articles do the following:

- Require any short-term rental to be the primary residence of the operator and define "primary residence" as a property at which the resident resides for at least 183 days per year;
- Require that the operator of a short-term rental unit be the owner of that unit;

- Require that operators of short-term rental units obtain a Certificate of Registration from the Town;
- Require that short-term rental units provide guests information about parking regulations and instructions for disposal of trash and recycling;
- Require that short-term rental operators provide their contact information, information for a secondary contact, and 24/7 emergency contact information for an individual who can respond within two hours;
- Prohibit commercial uses in short-term rentals;
- Prohibit rentals of less than 24 hours;
- Enable the Select Board to issue further regulations, including a cap on the number of Certificates;
- Provide for an appeals procedure if the Select Board does not establish one;
- Make the new by-law go into effect on January 1, 2022.

Differences between Articles 15 and 17

The following description of the differences between Articles 15 and 17 follows the order in which these items appear in the two Articles.

Section titles have been included to make it easy to locate where these changes appear, even if Article 17 only changes a small part of the Section.

Section 5.11.1 PURPOSE

STR Occupancy Limits: How Many Guests are Allowed

Article 15 limits the number of guests in an STR to two per bedroom, and a total of four guests in a multi-unit building and six in a single-unit building.

Article 17 retains the limit of two guests per bedroom, and removes limits on the total number of guests per unit by building type.

Section 5.11.4 REGISTRATION PROCEDURE AND SUBMISSION REQUIREMENTS

Condominium Associations and STRs: Consent and By-Laws

Article 15 requires that the short-term rental operator of a unit that is part of a condominium association to obtain a signed certification from the condominium association that indicates that the condominium association “consents” to the short-term rental.

Article 15 also requires that the short-term rental operator sign and submit a “certification” that operation of the short-term rental “complies with all” condominium documents, such as by-laws.

Article 17 deletes the requirement that the operator submit a statement of consent signed by the condominium association.

Article 17 requires that the operator submit a “statement” that operation of the short-term rental “is not prohibited” by condominium documents, such as by-laws.

Notification to Abutters

Article 15 requires that the Town notify abutters (owners, residents, and renters) who live within 300 feet of a short-term rental unit.

Article 17 deletes this provision and requires no notice to abutters.

Violations, Enforcement, and Suspension of STR Certificates

Article 15 enables the Town to “revoke, suspend or modify” a Certificate “for good cause.” In such cases, the short-term rental operator shall have the right to a hearing. If a short-term rental operator is issued three or more violation notices within a twelve-month period “under this article [i.e., the proposed Article 5.11 of the Town by-law], or of any municipal ordinance, state law, or building code” the Certificate “will” be revoked and can only be re-issued after a public hearing by the Select Board.

Article 17 states that Certificates may be revoked, suspended, or modified only for violations of the STR by-law (i.e., Article 5.11, the by-law proposed by the Article). If an STR operator is found to be in violation of the STR bylaw three times in a twelve-month period, the Certificate “may” be revoked—or suspended. The STR operator would have the opportunity to have a public hearing. Article 17 also requires that STR operators receive written notice of any revocation, suspension, or modification of a Certificate.

Section 5.11.5 INSPECTIONS

“Shall” or “May”

Article 15 requires that short-term rental units be inspected prior to receiving an initial Certificate of Registration. These inspections would determine if the unit complies with the building, health, and fire codes, as well as the provisions of the STR by-law and any further regulations. This requirement is indicated by use of the word “shall” in reference to these health and safety inspections.

Article 17 substitutes “may” for “shall” in reference to the inspections conducted in connection with an initial Certificate of Registration.

Both Article 15 and Article 17 say that inspections “may” be conducted when a Certificate is renewed.

Section 5.11.6 OPERATIONAL REQUIREMENTS FOR SHORT-TERM RENTALS

Limit on the Number of Days a Short-Term Rental May be Offered for Rental: 90 or 365

Article 15 imposes a limit of 90 days per year and allows the Select Board to change this limit.

Article 17 increases the limit to 365 days per year and eliminates the ability of the Select Board to change the limit.

Section 5.11.9 FINES

Article 15 imposes a fine of \$300 for each violation of the STR by-law and counts each day of a “continuing violation” as a separate violation.

Article 17 includes several changes to the “Fines” provisions of Article 15. First, it adds a cross-reference to paragraphs (6) and (7) and Section 5.11.4 of the Article, both of which differ from the respective provisions of Article 15, as described above. Second, “each day that a STR unit is rented without such violation having been addressed as may be required” counts as a separate violation. Third, violations that are “of a de minimis nature” are not counted as separate violations for each day that they continue.

First Assistant Town Counsel Patty Correa has enumerated several issues regarding these provisions of Article 17. Her March 18, 2021 memorandum is attached. The committee strongly recommends that Town Meeting Members read Town Counsel’s memorandum.

Section 5.11.10 REPORTING

What Would be Posted on the Town Website

Article 15 requires that a list of short-term rentals with active Certificates be published on the Town website and updated at least monthly. The list must include the address of the unit, effective and expiration dates of the Certificate, and the “approved number of rooms” and guests, as well as any other restrictions.

Article 15 also requires that a list of STR violations, with details of each violation, be published on the Town website and updated at least monthly.

Article 17 would insert “with sleeping accommodations” after “number of rooms”. There is ambiguity as to how Article 17 will impact the posting of violations to the website.